

**ZB# 74-7**

**Benjamin Harris**

**(no SBL given)**

74-7 - Benjamin Harris.

Public Hearing  
April 22nd - 8 p.m.  
All fees paid  
Notice published 4/12/74.  
OCPD notified  
Fee sent to V.T.

4/23/74  
filed and TC  
6-7-74  
1:00 P.M.  
J

APPLICATION FOR VARIANCE

Application No. 74-7

Date: \_\_\_\_\_

TO THE ZONING BOARD OF APPEALS OF THE TOWN OF NEW WINDSOR, NEW YORK

I (We) Benjamin Harris of P.O. Box 2552  
(Street & Number)

Newburgh

New York

(State)

HEREBY MAKE

APPLICATION FOR A VARIANCE:

A. Location of the Property 188 Route 9-W L B  
(Street & Number) (Zone)

B. Provision of the Zoning Ordinance Applicable: (Indicate the article, section, sub-section and paragraph of the Zoning Ordinance applicable, by number. Do not quote the ordinance.) Article IV Section 48 14 Subsection C

C. NOTE: NECESSARY FINDINGS: Before any Variance is granted, the Zoning Board of Appeals must find all of the following conditions to be present:

1. Conditions and circumstances are unique to the applicant's land, structure or building and do not apply to the neighboring lands, structures or buildings in the same zone because: None of the buildings in the area which surrounds the proposed new building are required to provide the same amount of parking, and the adjacent building has an excess of parking space, even though it does not provide the required parking.
2. Strict application of the provisions of this ordinance would deprive the applicant of a reasonable use of the land, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same zone because: adjacent buildings although not in compliance with the zoning ordinance have adequate parking, and strict interpretation of the zoning ordinance would require the owner to provide vast amounts of land dedicated to parking and make the building so small as not to be economically feasible.
3. The unique conditions and circumstances are not the result of actions taken of the applicant subsequent to the adoption of the Ordinance because: the land with its restrictive boundaries and topography has not been changed since the zoning ordinance went into effect.

4. Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance because: the requirements of the zoning ordinance are admittedly excessive, and the parking provided would be in excess of that provided by neighboring buildings.

5. Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zone because: the parking provided would be in excess of that provided by neighboring buildings, so no special privilege would be received by the applicant.

D. Describe in detail how the property is to be used and submit plans or sketches in duplicate.

Erection of a 7400 square foot building with basement adjacent to one existing 6000 square foot building on a 46,600 sq. ft. piece of property.

E. Application to be accompanied by two checks, one payable to the Town of New Windsor in the amount decided by the Board and the second check payable to the Secretary for taking the public hearing minutes. Applications to be returned to: Secretary of ZBA.

F. NOTICE OF HEARING: Applicant agrees to send notice of any public hearing via registered or certified mail to all abutting land owners as required by Sec. 9.4.1. of the Ordinance.

G. If the property in question is located within a radius of 500 ft. of an adjoining municipality, the Board should be notified. Also, have your attorney check Sec. 239 l&M of the Gen. Municipal Law to see if it applies. If so, notify the Orange County Planning Board by sending them an application.

Dated: Apr. 8, 1974

[Signature]  
Signature of Applicant

STATE OF NEW YORK) SS.:  
COUNTY OF ORANGE)

Sworn to on this 8th day of April, 1974.

Address \_\_\_\_\_

Patricia Delio  
(Notary Public)

PATRICIA DELIO  
Notary Public, State of New York  
Appointed in Orange County  
My Commission expires Mar. 30, 1976

Telephone Number \_\_\_\_\_

(DO NOT WRITE IN THIS SPACE)

Application No. \_\_\_\_\_  
Date of Hearing \_\_\_\_\_  
Date of Decision \_\_\_\_\_

Date Received \_\_\_\_\_  
Notice Published \_\_\_\_\_

DECISION:

*granted  
May 6/74.*



NEW WINDSOR ZONING BOARD OF APPEALS  
Regular Session  
April 22, 1974

MEMBERS PRESENT: Chairman Fred Wygant, Louise Budney, Lawrence Bilello, Ed Flanagan, Vincent Bivona and Mark Stortecky.

MEMBERS ABSENT: Theodore Jargstorf.

ALSO PRESENT: Daniel J. Bloom, Esq., Board Attorney and Patricia Delio, Secretary.

The April 22nd meeting of the Zoning Board of Appeals was called to order by Chairman Fred Wygant at 7:30 p.m. Secretary called the roll.

Motion by Ed Flanagan, seconded by Lawrence Bilello, to approve the April 8, 1974 minutes as written. Motion carried, all ayes.

Correspondence:

1. List of Building Permits and CO's for March received, examined and filed.

2. Telephonic request to Chairman Wygant from Stephen Jacobs Re: Kanaje Corporation. Mr. Jacobs asked if this Board would consider the LB section separately and completely eliminate the RB zone.

After some discussion, motion followed by Mark Stortecky, seconded by Larry Bilello that this is out of our jurisdiction and that the applicant should include this in his application for a zoning change and that the findings as shown in the minutes of April 8, 1974 apply to both the LB area and RB area as well.

The above motion carried by a unanimous vote.

\* \* \* \* \*

PUBLIC HEARING - Application of Benjamin Harris for a parking variance on his property located on Rt. 9W, Town of New Windsor, New York.

Secretary read the application, public hearing notice and reported that 19 return receipts (1 returned) were received from adjacent property owners. A list from the Town Assessor was received together with all fees. Affidavit of publication to follow.

Attending: Benjamin Harris and Greg Shaw. Mr. Harris presented

Mr. Harris: We have no changes to report. The last time I was told I adequate parking when I appeared before this Board. No variance was needed. The problem was I had made islands back 20 feet from the highway including the islands. It was never

April 22, 1974

established where the State lands were. The engineer said the islands were encroaching on the State road and I should go for a variance.

Mr. Wygant: How many parking spaces do you have which encroach?

Mr. Harris: 19 eliminated. I need 89 and I have 72. In fact, I have 91 but the Board went ahead and gave me a variance to use it as 72. I thought I was home free.

Mr. Stortecky: Who is the tenant?

Mr. Harris: I don't have one. I am building it for spec.

Mr. Bilello: Didn't we send these plans to Orange County and they approved them?

Mr. Harris: Yes, they did.

Mr. Stortecky: They don't know where the State line is?

Mr. Harris: They have an idea. The parking is short if they put it anywhere in here. If you want to stop the parking on the State right of way you can go down 9W and close out everybody. I can get by with 72 parking spaces if I had to.

Mr. Bilello: You could use this right of way any way.

Mr. Harris: I know.

Mr. Wygant: These spaces were not previously shown on this map.

Mr. Shaw: Yes they were. We just wiped some out.

Mr. Bilello: We can't do anything until we hear from the County again.

Mr. Wygant: Are there any questions from the people in the audience?

(None were forthcoming. No spectators attending this hearing.)

Mr. Wygant: We will have to wait for County recommendations. We can't make a decision until we get their recommendations. We have to take these into consideration. Also you will need 5 affirmative votes of this Board if the County turns this down.

Mr. Harris: As a practical matter, we have the parking there if we need it.

Mr. Wygant: We will make a decision at our next meeting.

Hearing adjourned.

\* \* \* \* \*

April 22, 1974

PUBLIC HEARING - On application of Joseph Fernandez for a variance on properties owned by him located on the southerly side of Silver Spring Road, New Windsor.

Secretary read the application, public hearing notice and reported that 53 return receipts were received (4 unclaimed) from adjacent property owners. A list from the Town Assessor was received together with all fees.

Present: Attorney, Allen Indzonka and Mr. Fernandez.

Mr. Allen Indzonka presented:

Mr. Indzonka: Briefly, the situation is that he bought this piece of property that had 4 houses on it and the small houses were there 50 years ago. On the back of the property fronting on Fernandez Avenue there is a half acre parcel. He would like to build residential dwellings. Under the existing situation about building residential dwellings there is a half acre parcel which would go to waste.

Mr. Stortecky: How is he getting in there? The access?

Mr. Indzonka: From Fernandez Avenue. This road comes in and goes out Silver Spring Road.

Mr. Wygant: The Planning Board and Building Inspector have suggested that a 30 ft. variance is indicated for this parcel.

Mr. Indzonka: That is the problem because that is where the houses are and they were here 50 years ago.

Mr. Wygant: Does he want to subdivide this parcel?

Mr. Indzonka: No. He is stuck with these here, but He would like to build a house on this 5 acre parcel. What do we do with this half acre parcel in back?

Mr. Bilello: Did he ever legally subdivide this?

Mr. Wygant: Referring to the minutes of the public hearing of December 12, 1973 and also a letter from Howard Collett, dated February 27, 1974, his division was approved by the Planning Board on the condition we approve a 30 ft. variance. The Planning Board wants this previous violation corrected by a variance before they give subdivision approval.

Mr. Bloom: Mr. Indzonka, how many deeds are there to this property?

Mr. Indzonka: On this property, just one big deed originally. Then he deeded this to Maroney.

Mr. Bloom: Originally this was required under one deed prior to the zoning ordinance?

Mr. Indzonka: Not by him but they were there before zoning.

April 22, 1974

Mr. Bloom: When was this conveyed to Maroney?

Mr. Indzonka: Within the past two years.

Mr. Bloom: He did<sup>not</sup>/obtain subdivision approval?

Mr. Indzonka: No.

Mr. Bloom: It is his desire to use this back portion?

Mr. Indzonka: He wants to be able to sell this or build a house in there.

Mr. Bloom: Is this a Town Road?

Mr. Indzonka: This is a public road there.

Mr. Wygant: Are there any comments from any people in the audience (list of spectators attached.)?

Hyman Slavin: Silver Spring Road. I am curious about the use of the property as it affects the residents of Silver Spring Road.

Mr. Wygant: Is it your intention to build a house on this?

Mr. Fernandez: I will try to sell this lot in the back.

Mr. Wygant: This would be for residential purposes. It is zoned residential.

Mr. Slavin: I find no objections to this. It doesn't affect me.

Mr. Wygant: If there are no further comments to be made and no other questions from the Board members, I shall declare this hearing closed. (Spectators adjourned.) County approval was not needed on this application. We will probably make our decision later on in this meeting.

\* \* \* \* \*

PUBLIC HEARING - Application for Variance of Westchester Concrete Corp. located off Windsor Highway (behind Argenio's), New Windsor, N. Y., to construct a repair garage for trucks on the site.

Secretary read the application, public hearing notice and reported that 12 return receipts were received from adjacent property owners. A list from the Town Assessor was also accepted together with all fees paid.

Present: Mr. Francis Valentino of Westchester Concrete Corp.

Mr. Valentino: Our problem mainly is a matter of traffic pattern. (Indicating from map.) Our trucks come in the gate on Route 32 next to Argenio's, just past Tose. The trucks must follow

April 22, 1974

this pattern and go around, making a turn and come into the batching area. We have a lower and a higher batching area. They cannot come in on the other side because of the topography. If we move our building it will interfere with our traffic pattern. We have also a temperature control on our concrete and we have to add ice to keep this cool. We have to bring a trailer and parking it by this machine. If we bring this building in here (indicating on map, we have no room for bringing in the trucks.

Mr. Stortecky: How many feet from the existing batching plant to the proposed building?

Mr. Valentino: Approximately 120 feet.

Mr. Wygant: The height of the proposed building is 20 ft. high. Is this with a peaked roof?

Mr. Valentino: A modified roof, not peaked. Twenty feet to the eave.

Mr. Stortecky: How high from your level from the building.

Mr. Valentino: About 5 feet. I would have to double check this.

Mr. Stortecky: Then the building height would be 25 feet. Is this a metal building?

Mr. Valentino: No. Block.

Mr. Flanagan: Any bays in the building?

Mr. Valentino: Three or four bays.

Mr. Wygant: Doors will be on the eastside facing onto your property and no entrance from the rear?

Mr. Valentino: Yes. That is right. We never use this gate. Only as an escape valve.

Mrs. Budney: That is permitted distance; 20 feet in the back?

Mr. Wygant: No, but building height requires one foot for each 6 inches of building height. With 25 ft. height, he needs 50 feet. He needs a 30 ft. variance back and to the north. He has 20 and it should be 50.

Mrs. Budney: How far away is Ruscitti Road?

Mr. Valentino: Right behind us.

Mr. Bilello: Right where they have the cable across. This is where they are.

Mr. Wygant: Is that cable your gate?

Mrs. Budney: No this is across Ruscitti Road. This is the

April 22, 1974

end of Ruscitti Road. We have been working on continuing this for years.

Mr. Bloom: Mr. Valentino, the exit on the eastern side of the property, does this lead to Ruscitti Road?

Mr. Valentino: Yes.

Mr. Bloom: How far is this from your property line on the east?

Mr. Valentino: It is directly on it.

Mr. Bloom: Is Ruscitti Road a Town Road or private road?

Mr. Valentino: It is a town road right up to the Monarch Metal property.

Mr. Bloom: Directly to the east of Ruscitti Road and adjacent to your property, who owns this property?

Mr. Valentino: Joe Ruscitti.

Mr. Bloom: No structures on this property?

Mr. Valentino: No. All wet and swampy land.

Mr. Bloom: Immediately to the north of the property in question, particularly in the area of the proposed building itself, who owns this?

Mr. Valentino: Tose Trucking.

Mr. Bloom: Do they have any structures in this area?

Mr. Valentino: The property kind of narrows down here (indicating on map).

Mr. Bloom: To the south in the area of your building, who owns this?

Mr. Valentino: This is Monarch Metal.

Mr. Bloom: Do they utilize this property in connection with your driveway?

Mr. Valentino: Yes.

Mr. Bloom: How high is Monarch's building?

Mr. Valentino: About the same.

Mr. Bloom: Tose is just one story also?

Mr. Valentino: About 20 to 22 ft. in height.

Mr. Bloom: When did you acquire title to this property?

April 22, 1974

Mr. Valentino: Six and a half years now.

Mr. Bloom: At the time you acquired title, were any of these structures in existence?

Mr. Valentino: These old structures were in. As I understand it, these were all chicken farms.

Mr. Bloom: Do you intend to incorporate your facilities into this building?

Mr. Valentino: Yes. We will possibly take this one down (pointing to map.) This is an old house and we use it as an office right now.

Mr. Bilello: Is this 500 feet from the road?

Mr. Wygant: We have determined that this is 500 ft. from the highway and will require County recommendations.

(Letter sent out to County on April 11, 1974. No response received to date.)

Mr. Wygant: If there are no other comments, I shall declare this hearing closed. A decision will probably be made at the next meeting of May 6, 1974 when County recommendations are received.

Hearing closed. Spectators excused.

\* \* \* \* \*

DECISION: Application of Joseph Fernandez previously heard.

Motion followed by Lawrence Bilello, seconded by Mark Stortecky to approve a 30 foot front yard variance to Joseph Fernandez.

ROLL CALL: Mrs. Budney: Yes.  
Mr. Bilello: Yes  
Mr. Flanagan: Yes  
Mr. Bivona: Yes  
Mr. Stortecky: Yes  
Mr. Wygant: Yes

Motion carried 6 ayes - no nays. Fernandez application approved.

\* \* \* \* \*

Regarding the above application of Fernandez, the Board found the following to be true:

1. The overall premises together with existing residential structures have been in existence as residences for more than 35 or 40 years last past and may be regarded as non-conforming at the time of the adoption of the zoning regulations.

2. Applicant cannot utilize this parcel of land for which it is zoned unless a variance is granted and subsequent subdivision

April 22, 1974

approval cannot be given by the Planning Board unless a variance of 30 feet is granted.

3. Applicant purchased the premises with improved residential structures thereon and has taken no action since adoption of the ordinance to change the overall non-conforming use.

The Board, therefore, concluded the following:

1. Conditions and circumstances are unique to the applicant's land, structure or building and do not apply to the neighboring lands, structures or buildings in the same zone.

2. Strict application of the provisions of this ordinance would deprive the applicant of a reasonable use of the land, structures or buildings in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same zone.

3. The unique conditions and circumstances are not the result of the actions taken of the applicant subsequent to the adoption of the Ordinance.

\* \* \* \* \*

Mrs. V. Lee Hansen of 431 Beaver Brook Road appeared before the Board requesting that she be allowed to keep a pony on her property located in an RA zone. She stated that the pony would be penned and would not be within 50 feet of any lot line. Also, she does not intend to keep more than one animal.

Attorney Bloom advised Mrs. Hansen that according to the Zoning Ordinance under RA zones, Section 28-6 A 5(e), this is stated as an accessory use to her property and would be allowed as long as the above requirements were met, i.e. animal would have to be penned and pen would have to exist within 50 ft. of any adjacent property line.

Mr. Wygant informed Mrs. Hansen that the Building Inspector would receive a letter from the ZBA accordingly.

\* \* \* \* \*

Correspondence (continued):

3. Memo from the Supervisor's Office dated April 10, 1974  
Re: Amendment of Ordinances - Fire Prevention Bureau. Which memo requests Zoning Board comments.

Action: After short discussion, the members of the Board decided the following: The ZBA has reviewed the proposed local law amending the Zoning Ordinance - Section 48-35. The Board feels that the strict enforcement of these requirements would render an undue



April 22, 1974

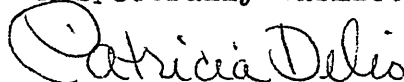
hardship on any applicant other than one for commercial use. We would suggest that the proposed law be re-written to exclude residential uses.

4. Letter, dated April 2, 1974 from Orange County Municipal Planning Federation reporting an Environmental Program to be held on Tuesday, April 30th with reservation forms included. Members of the Board were asked to attend. \*

\* \* \* \* \*

Since there was no further business to be conducted, motion followed by Larry Bilello, seconded by Vincent Bivona to adjourn. Motion carried, all ayes. Meeting adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia Delio". The signature is written in dark ink and is positioned above the printed name.

Patricia Delio, Secretary

4/22/74

Public Hearing - 8:15 p.m. - Joseph Fernandez

<u>Name</u>	<u>Address</u>
DANIEL S HLADIK	62 UNION AVE NEW WINDSOR, N.Y.
JOHN V GINDA	76 UNION AVE NEW WINDSOR, N.Y.
Mr. Mrs. H. H. Lavin	69 Silver Spring Rd. New Windsor, N.Y.
Salvador Paratore	80 Union Ave NEW WINDSOR N.Y.
Joe J. Muelo	110 1/4 Rensselaer Ave New Windsor, N.Y.
George A. Ringler	59 Silver Spr. Rd. New Windsor N.Y.
Francis Valentini	4 Van Cortland Circle, Beacon N.Y.

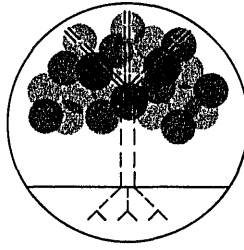
4/22/74

Public Hearing - 8:30 p.m. - Westchester Concrete Corp.

<u>Name</u>	<u>Address</u>
B. WM. LAHEY	2 KNOX DR. N.W.
ALLEN J. INDZUNKA	72 Balmville Rd. - Newburgh N.Y.
<del>Cardinal</del>	
J. Fernandez	Fernandez Ave - New Windsor, N.Y.

# Department of Planning

Peter Garrison, AIP, Commissioner  
Edwin J. Garling, AIP, Deputy Commissioner



The County Building  
Goshen, New York 10924  
(914) 294-5151

# County of Orange

Louis V. Mills, County Executive

April 26, 1974

Mr. Fred Wygant, Chairman  
Town of New Windsor Zoning Board of Appeals  
c/o Mrs. Patricia Delio, Secretary  
7 Franklin Avenue  
New Windsor, New York 12550

Re: Variance of Benjamin Harris  
NWT 73-34M

Dear Mr. Wygant:

Regarding the above-cited request for variance, we refer you to our letters dated October 19, 1973, October 29, 1973, November 18, 1973, and February 6, 1974. We have no further comment on the application.

Very truly yours,

*Peter Garrison*  
Peter Garrison  
Commissioner of Planning

hc

Reviewed by: Thomas E. Markowski,  
Planner

Please publish on or before April 12th. Send bill to: Benjamin Harris  
Route 9W  
New Windsor, N.Y.

PUBLIC NOTICE OF HEARING BEFORE  
THE ZONING BOARD OF APPEALS

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the  
Town of New Windsor, New York will hold a public hearing pursuant  
to Section 48-33 A of the Zoning Ordinance on the following proposition:

Appeal No. 7

Request of BENJAMIN HARRIS for a

Variance ~~Conditional Use Permit~~ of the regulations of  
the Zoning Ordinance, to permit the erection of a 7400  
square ft. building with base (describe proposal)  
ment, and a parking variance

being a Variance ~~Conditional Use Permit~~ of Article IV,  
Section 48-14C, for property owned by him situated  
as follows: No. 188 Route 9W, Town of New Windsor,  
Orange County, New York

SAID HEARING will take place on the 22nd day of April, 1974,  
at the New Windsor Town Hall, 555 Union Avenue, New Windsor, N. Y.  
beginning at 8 o'clock P. M.

FRED WYGANT

By: Chairman  
PATRICIA DELIO, Secretary



